

HOUSE BILL 1010

By Hicks G

AN ACT to amend Tennessee Code Annotated, Title 9,  
Chapter 8, Part 1 and Title 56, relative to  
insurance for the state.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 9, Chapter 8, Part 1, is amended by  
adding the following as a new section:

(a) With the approval of the board of claims pursuant to this section and  
notwithstanding § 56-13-119, the state treasurer may establish and maintain a captive  
insurance company as defined in § 56-13-102.

(b) The captive insurance company described in subsection (a):

(1) Is subject to the Revised Tennessee Captive Insurance Act, compiled  
in title 56, chapter 13, as applicable, and other applicable laws and rules  
regardless of whether adequate insurance markets are available to cover the  
risks, hazards, and liabilities described in this section;

(2) Is a separate legal entity, owned and controlled by the state, and shall  
only insure the potential losses, exposures, and risks of entities that are subject  
to insurance and self-insurance pursuant to this chapter, including, but not limited  
to, executive, legislative, and judicial branch state agencies and state institutions  
of higher education; and

(3) Is administratively attached to the department of treasury for the  
purposes of administration and personnel.

(c) Through the establishment of the captive insurance company described in  
subsection (a), the board of claims shall:

(1) Annually review and approve the captive insurance company's business plan;

(2) Periodically determine, reevaluate, and revise:

(A) The potential losses, exposures, and risks that will be insured through the captive insurance company;

(B) The nature and scope of insurance coverage or coverages to be provided through the captive insurance company;

(C) The method by which coverage and coverages are to be extended, and contributions are to be paid and collected, including, but not limited to, premiums and assessments;

(D) The amount of the exposure for each line of insurance coverage, as well as the premium amounts for each entity, including, but not limited to, state institutions of higher education;

(E) A process through which premiums may be collected directly from the state as opposed to each entity; and

(F) The initial and continuing capital requirements to form and maintain the captive insurance company, including, but not limited to, the amount and funding source for the initial and continuing capital. Initial or continuing capital may be funded by appropriations in the general appropriations act, from the risk management fund contained in § 9-8-109, or other sources allowable under applicable laws and rules;

(3) Establish an investment policy for the investment and reinvestment of capital, premiums, and other funds and assets of the captive insurance company. The policy may authorize the funds and assets to be invested in a security, investment, or investment interest that is not otherwise prohibited by Article II, §

31 of the Tennessee constitution. Collateral that is required to secure an investment or investment interest authorized in the policy may be in the form of a security, investment, or investment interest in which the funds and assets of the captive insurance company may be directly invested in, including cash;

(4) Promulgate substantive or procedural rules to effectuate this section;

(5) Approve regulatory filings to be made by the state on behalf of the captive insurance company in compliance with applicable laws and rules;

(6) Delegate to the state treasurer the day-to-day operations and responsibilities of the captive insurance company. The state treasurer shall implement the board of claims directives, and exercise the state's powers, duties, and responsibilities contained in this section, to implement the captive insurance company. The state treasurer may assign duties and responsibilities to the state treasurer's staff, or private vendors and contractors, as the state treasurer deems necessary and proper, and may consult with professionals as necessary about the administration of the captive insurance company. The state treasurer may also establish, implement, and adopt policies, guidelines, and operating procedures in accordance with this section and the board's delegation;

(7) Approve the dissolution of the captive insurance company; and

(8) Perform other duties or actions necessary for the effective implementation, operation, and administration of the captive insurance company.

(d) Upon the board of claims approval of the formation of the captive insurance company described in subsection (a), the state treasurer is authorized to:

(1) Provide administrative support to implement, administer, and operate the captive insurance company through its administrative attachment to the department of treasury;

(2) Facilitate the creation, implementation, or modification of the insurance policy or policies issued by the captive insurance company;

(3) Facilitate agreements between the captive insurance company and other insurers and reinsurers;

(4) Facilitate contracts, agreements, and procurements on behalf of the captive insurance company to effectuate this section, including, but not limited to, financial consultants; investment consultants; actuaries; auditors; accountants; brokers; adjusters; attorneys; third party administrators; and other contractors as necessary to carry out the duties and responsibilities of establishing, implementing, and administering the captive insurance company. Payment for expenses for these services may come from the risk management fund or the assets of the captive insurance company;

(5) Prepare or assist in the preparation of financial statements and reports of financial condition;

(6) Maintain or assist in maintaining accounting for the captive insurance company;

(7) Ensure the captive insurance company's compliance with applicable laws and rules; and

(8) Perform other duties or actions necessary for the effective implementation, operation, and administration of the captive insurance company.

(e) Funds received by the captive insurance company must be used exclusively for the purposes and activities set forth in this section, and must be invested and reinvested in the name of the captive insurance company by the state treasurer in accordance with the board's investment policy established pursuant to this section.

(f) Notwithstanding any law to the contrary:

(1) A reserve balance remaining unexpended at the end of a fiscal year in the captive insurance company's fund or account does not revert to the general fund or the risk management fund but is carried forward into the subsequent fiscal year; and

(2) Interest accruing on investments and deposits of the captive insurance company must be credited to the company's fund or account, must not revert to the general fund or the risk management fund, and must be carried forward into the subsequent fiscal year.

(g)

(1) The captive insurance company's policies must contain provisions that are consistent with the state's claims administration process contained in chapter 8, parts 3 and 4 of this title, and other applicable laws and rules relative to the adjustment, adjudication, and settlement of claims filed against the state.

(2) The granting or denial of claims filed pursuant to the captive insurance company's policies must be done in accordance with chapter 8, parts 3 and 4 of this title, and other applicable laws and rules.

(h) The captive insurance company described in subsection (a) is subject to, and shall comply with, applicable laws and rules relative to captive insurance companies and the applicable laws and rules governing its business structure.

(i) The captive insurance company described in subsection (a) is subject to examination and audit by the comptroller of the treasury in the same manner as prescribed for the department of treasury.

(j) If the captive insurance company described in subsection (a) ceases to exist, then its assets remaining after its obligations and liabilities have been satisfied or

discharged shall pass to, and become the property of, the risk management fund contained in § 9-8-109.

SECTION 2. Tennessee Code Annotated, Section 9-8-109(d), is amended by deleting the subsection and substituting the following:

(1) Expenses payable from the risk management fund include those attributable to:

- (A) Defending state employees pursuant to title 8, chapter 42;
- (B) Defending the state pursuant to part 3 of this chapter;
- (C) The division of claims and risk management; and
- (D) The Tennessee claims commission.

(2) Expenses attributable to the following may be paid from the risk management fund:

- (A) The department of treasury's casualty risk program;
- (B) Initial and continuing capital to fund the state's captive insurance company;
- (C) Expenses for the operation of the state's captive insurance company;
- (D) Premium payments for covered entities; and
- (E) Expenses and losses arising pursuant to title 12, chapter 4, part 10.

(3) Expenses pursuant to this subsection (d) are subject to annual appropriations and chapter 4, part 51 of this title.

(4) Subsequent to the close of each fiscal year, the attorney general and reporter shall provide to the state board of claims a report describing the manner in which funds received from the risk management fund were used in defending actions brought against the state and its employees.

SECTION 3. The board of claims is authorized to promulgate rules to effectuate the purposes of this act. The rules must be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

SECTION 4. This act takes effect upon becoming a law, the public welfare requiring it.